

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMIE CATHERINE SHALLAL,

Defendant-Appellant.

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UNPUBLISHED

March 28, 2006

No. 259300

Oakland Circuit Court

LC No. 04-196990-FH

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right from jury convictions of first-degree home invasion, MCL 750.110a(2), second-degree home invasion, MCL 750.110a(3), and receiving or concealing stolen property worth less than \$200, MCL 750.535(5). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant contends that the trial court erred in denying her request for a lesser included instruction on illegal entry, also known as breaking and entering without permission, MCL 750.115(1). We disagree.

“When a defendant requests a jury instruction on a theory or defense that is supported by the evidence, the trial court must give the instruction.” *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002). The court is only required to instruct on a necessarily included lesser offense or attempt, be it a felony or a misdemeanor, if requested to do so and the lesser offense is supported by a rational view of the evidence. The court is not to instruct on cognate lesser offenses. *People v Silver*, 466 Mich 386, 388; 646 NW2d 150 (2002); *People v Cornell*, 466 Mich 335, 357-359; 646 NW2d 127 (2002). The misdemeanor offense of breaking and entering without permission is a necessarily included lesser offense of first-degree home invasion. *Silver*, *supra* at 392. “The two crimes are distinguished by the intent to commit ‘a felony, larceny, or assault,’ once in the dwelling.” *Id.* The trial court’s ruling regarding a lesser included offense is reviewed de novo. *People v Walls*, 265 Mich App 642, 644; 697 NW2d 535 (2005).

In this case, the distinguishing element, the intent to commit a larceny inside the dwelling, was never in dispute. The evidence showed that defendant’s accomplices entered one victim’s house, ransacked it, and took several items. As they broke into a second victim’s house, they put on gloves. Defendant admitted in her statement that her accomplices entered the dwellings to get money or goods they could trade for money with which to buy crack.

Defendant's position at trial was that she was present when the crimes were committed, but she did not want to participate in them, and did not aid and abet in their commission. Because there was no dispute regarding the intent with which defendant's accomplices entered the dwellings and no evidence to suggest that they lacked the intent to commit a larceny when they entered, the trial court properly declined to instruct on breaking and entering without permission.

Next, defendant contends that the trial court erred in failing to instruct on the requisite intent necessary for conviction as an aider and abettor. The record shows that the trial court read CJI2d 8.1 in its entirety but out of order; it read CJI2d 8.1(3)(c) and then read the balance of the instruction. Defendant later objected to the "omission" of paragraph (3)(c) and the court reinstructed the jury, reading paragraph (3) in its entirety. Defense counsel stated that he was satisfied with the correction. Because defendant approved of the manner in which the court corrected the error, she has waived the issue and there is no error to review. *People v Carter*, 462 Mich 206, 219-220; 612 NW2d 144 (2000).

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra